



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced: **02/22/05**

Bill No: **SB 607**

Tax: **Sales and Use Tax**

Author: **Bowen**

Related Bills:

BILL SUMMARY

This bill would define “a series of sales sufficient in number, scope, and character” for purposes of defining activities for which a seller’s permit is required, to mean three or more sales in any 12-month period where the gross receipts from those sales exceeds \$1,200.

ANALYSIS

Current Law

Existing law imposes a sales tax on retailers for the privilege of selling tangible personal property at retail. A “retailer” is defined in the law (Section 6019 of the Sales and Use Tax Law) to mean, among other things, every individual or firm making more than two retail sales of tangible personal property during any 12-month period.

Existing law (Section 6066) requires every seller engaging in the business of selling tangible personal property that is subject to the tax when sold at retail to apply to the Board for a seller’s permit and remit the tax on all of his or her taxable sales. However, persons making “occasional sales” are not so required.

Section 6367 of the Sales and Use Tax Law provides an exemption from sales tax for the occasional sale of tangible personal property, and occasional sellers are not required to hold seller’s permits. Section 6006.5 of the Revenue and Taxation Code defines “occasional sales” to mean, among other things, a sale of property not held or used by a seller in the course of activities for which he or she is required to hold a seller’s permit, provided that the sale is *not* one of a series of sales sufficient in number, scope, and character to constitute an activity for which he or she is required to hold a seller’s permit. The law does not define “a series of sales sufficient in number, scope, and character.”

To illustrate an example of a “seller” that is required to hold a seller’s permit, and an “occasional” seller that is *not* required to hold a seller’s permit, if a person sells a used hammer and makes no other sales during any 12-month period in which the sale of the hammer occurred, that person is not a “seller” and the sale of the hammer is an exempt occasional sale. However, if that person had opened a hardware store, made a single sale of a hammer to a consumer, and then closed down, the person would be a seller and the sale of the hammer would be a taxable retail sale because the person would have been in the business of selling tangible personal property, even though only one sale had been made.

Proposed Law

This bill would amend Section 6006.5 of the Sales and Use Tax Law to define “a series of sales sufficient in number, scope, and character” to mean three or more sales in any 12-month period where the gross receipts from those sales exceed \$1,200.

As a tax levy, the bill would become effective immediately; however, it would become operative on the first day of the calendar quarter commencing more than 90 days after the bill becomes law.

In General

The Board has promulgated 1595, *Occasional Sales*, to give guidance as to whether a seller's permit is required when making occasional sales of tangible personal property. The regulation provides that, for persons who are *not* engaged in the business of selling tangible personal property, the first two sales in a series of sales requiring a seller's permit are exempt from tax as occasional sales. Under this regulation, the third sale in such a series, and any subsequent sale, is subject to tax. In determining whether a person has made more than two sales during a 12-month period, the following types of sales are excluded:

- a) Trade-ins made incidental to a nonselling activity. For example, an accountant trading in an old copier for a new one.
- b) Sales made by an auctioneer on behalf of the person (the auctioneer is the retailer and liable for the tax, not the person.)
- c) Sales of horses through claiming races (the racing association is the retailer and liable for the tax not the person owning the horse.)
- d) Sales of vehicles, vessels or aircraft, exempt from the sales tax by Sections 6282 and 6283, but subject to use tax imposed on the purchaser.

In determining whether the sales are for “substantial” amounts, the Board considers all the facts of each situation. The Board has considered the issue of what constitutes sales in substantial amounts in the 1993 Memorandum Opinion of Pratt North Plaza Associates. The Board concluded that a sale of \$400 is a substantial amount for the purposes of the occasional sales rules. However, the issue whether sales in amounts less than \$400 are substantial was not specifically addressed.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author to provide clarity in the law so that the general public will know when they officially become "sellers" and are obligated to obtain a seller's permit and remit the tax.
2. **The bill would simplify administration of the Sales and Use Tax Law.** Enactment of this bill would provide certainty in the law with regard to the occasional seller who may make incidental sales, either through a garage sale, or through a posting on an Internet auction site. However, it should be noted that, for persons *engaged in the business of selling*, a seller's permit would continue to be required, and tax would continue to apply to all their sales of tangible personal property.

COST ESTIMATE

Some costs would be incurred in amending the Board's Regulation 1595, revising administrative manuals and the Board's website, and answering inquiries. These costs are expected to be insignificant (under \$10,000).

REVENUE ESTIMATE

To the extent this bill would establish clear guidelines with respect to when a seller's permit is required, voluntary compliance could increase, thereby having a positive effect on state and local revenues. The magnitude of this increase, however, is unknown.

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